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ABSTRACT

As journalism teacher-advisors become better trained and better organized professionally, they are more often following the lead of student journalists of the 1960s and clarifying their rights in court. Only two cases relevant to the advisor's First Amendment rights have been decided. Although both decisions were adverse to the advisors concerned, considerations other than First Amendment rights were of primary importance to the courts in each decision. Several out-of-court settlements have supported a trend toward granting advisors the same constitutional rights given students, and two pending cases should serve to further clarify the issue. However, taking a case to court may not always be the wisest resolution. Litigation is costly and time-consuming, and a compromise may be much more effective if reached out of court instead. The key element in any compromise is that the groups concerned should be well informed about what the high school press may and may not do, how those rights are supported by the First Amendment, and why such an amendment must be exercised in a free, democratic society--even on the high school level. (RB)

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First Amendment and the High School Press Adviser

by Carol Kathleen Driscoll

PREFACE

While studies of students' First Amendment rights are being made in increasing numbers,a related body of law, high school press advisers' rights, has been neglected to some degree. Certainly a major reason for this situation is a dearth of material on the subject of advisers' rights; relatively few overt controversies have arisen. Students have taken cases to court while advisers remained in the background.

Many advisers today maintain this safe posture, reluctant to argue with administrative policy when job markets for teachers are not good, even when that policy may be too restrictive, or unconstitutional.

'I think basically the principals hire untrained, untenured teachers who are not secure enough to exercise First Amendment rights,' contended Prof. Sam Feldman at a Journalism Education Association convention in 1974.[1] 'They (the advisers) want to stay employed particularly in today's job situation.'

A growing number of advisers, however, more thoroughly trained in journalism and better organized as professional teachers than ever before, are beginning to demand First Amendment rights for their students and themselves. They are coming to view themselves as 'First Amendment representatives on campus.'[2]

Several advisers have taken their cases to court after being dismissed because of First Amendment conflicts, and many others have successfully confronted administrators, bringing about substantial changes in editorial policy for high school papers.

High school journalism education finds itself in an exciting stage of development today. Student newspapers are realizing meaningful potential, and students are beginning to experience the rights and responsibilities of journalism instead of merely reading about them. The purpose of this study is to clarify the role of the student press adviser amidst this change.

An examination of the state of the profession will include a summary of the type of background advisers usually have, the legal rights his students have and adviser-administration conflicts that have been resolved in recent years. Such a study is necessarily incomplete since several crucial advisers' rights cases are now pending in the courts, but it should help concerned advisers to understand more fully the reasons behind future court decisions, and help them to determine what action they may take should problems arise.

Background on the Author

Carol K. Driscoll graduated from the University of Wisconsin-Madison in May 1975, with an Honors Degree from the School of Journalism, a second major in English, and certification to teach both subjects on a secondary school level. After spending the summer in Tennessee working as an editor of technical publications at Oak Ridge National Laboratory, she moved to Bellevue, Washington, where she is currently employed as the public affairs coordinator for the Northwest Pulp and Paper Association.

1. WHO IS THE ADVISER?

Before studying the legal dilemmas surrounding the high school publications adviser, a brief summary is in order. The role of the high school newspaper has been changing since its widespread beginning in the early part of the 20th century. Generally, it has become less school oriented, broadening its coverage to include community, national, and even international affairs of interest to students. Along with this increasing sophistication of the press, the role of the adviser has evolved becoming ever more demanding.

The Beginnings of the High School Press. Development of an active journalism program on the high school level closely followed that in colleges across the country. After a few scattered attempts, such as that proposed by Pres. Robert E. Lee of Washington College (later Washington and Lee University) in 1869 and carried on for two years with a few boys enrolled,[3] the first four-year journ-

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alism program was established at the University of Illinois in 1904.[4] In 1905, the University of Wisconsin organized a permanent curriculum,[5] and the first separate school of journalism was founded three years later at the University of Missouri.[6]

Less than a decade later, high schools followed suit. Journalism classes originated primarily in the Midwest and West, where the most advanced college programs had developed, beginning about 1916 in Kansas and a few other states.[7] An initial growth spurt spread high school journalism throughout these two areas. One informal survey in 1925 estimated that some form of journalism education could be found in 90 percent of Pacific Coast high schools, particularly California, and in 35 to 40 percent of those in the Midwest.[8]

In almost all cases, journalism moved into the curriculum as an instructional unit within the English program. Usually identified as 'News Writing' in those early years, rather than the more inclusive 'Journalism', it was simply meant to be an innovative method of teaching composition. 'It would be most unfortunate from all points of view if young people in high school were encouraged or permitted to think that a course in News Writing is a course in Journalism,' succinctly stated one early text..[9] News Writing was 'practical' English, or 'motivated composition'[10] – a way of interesting students in an otherwise dull subject.

This is not to say, however, that journalism moved easily into the school system in any form. Its introduction was often met with controversy over what should be taught. From within the high school itself, teachers and administrators questioned the value of newswriting courses, fearing that composition could be turned into 'mere play.'[11] From without, college journalism instructors were concerned that the high school course would lean too much toward vocational training.[12] Some educators emphasized the composition aspect of newswriting, others the vocational aspect. That there was no standardized approach to the early journalism curriculum is evident from these excerpts from two high school texts regarding the purpose of the journalism course in high school:

> *First is the purpose of developing in the student a liking for composition, and increasing his ability to write . . .*
>
> *Second, is the object of developing the student's power of observation . . .*
>
> *Third, is the aim of giving the student an understanding of the newspaper as an institution, an organ of democracy. . .*[13]
>
> *The high school course should offer reliable vocational guidance.*
>
> *A secondary purpose of the high school course should be to teach the student to evaluate the true worth of printed information as he finds it.*
>
> *The high school course should also be offered as a project method in English.*[14]

The controversy over purposes continued, but agreement was reached on one aspect of the high school journalism course: it was here to stay.

> *There was a time, just a few years back, when we could look upon the matter as 'an interesting tendency' – an innovation that might grow into something worthwhile or something very bad if given proper or improper encouragement. That time is past – high school teaching of journalism is here: it is a fact that must be dealt with seriously.*[15]

As journalism or newswriting courses became more common, so did student newspapers. Actually, the high school press had been active long before – in 1776, the first high school newspaper was founded, every issue being handwritten.[16] More than 300 student publications existed before 1900.[17] But the numbers mushroomed in the early 1920s as journalism became an accepted part of the curriculum.

Usually, student newspapers originated in one of three ways. Some schools of this time offered printing courses. Printing teachers often encouraged the organization of a newswriting class to provide copy for students performing laboratory exercises in the skill.[18] More often, with the introduction of newswriting units into composition classes, the monthly or quarterly literary magazines produced by the English department evolved into a newspaper.[19] In most cases, however, the high school journalism course and the high school paper grew up together. As school administrators came to realize the potential public relations value of a student newspaper distributed throughout the community, they encouraged development of a journalism program to improve the product and hired a teacher-adviser to train writers and editors.[20] Competitive contests organized at this time fostered growth of the high school press.

During these years, most of the production work was extracurricular. Later, as publications became more sophisticated, and consequently more time-consuming, newspaper production was often made a part of the school day. 'Journalism came to mean 'newspaper production' in some school classes.

The journalism course, still under the auspices of of the English department, expanded in the latter half of the 1920s and early 1930s to become a full-blown survey of the subject in some schools. Wrote one observer in 1928:

> The high school course in journalism usually takes up every phase of journalism – from the writing of headlines to the study of the processes of engraving. The course includes instruction in newswriting, in feature writing, in makeup and editing, in printing and engraving, and in history and ethics. In fact, the whole field of journalism is hastily surveyed.[21]

One of the main problems then, which has remained to the present, was the curriculum's lack of standardization.[22] Each journalism program was unique according to the school administration's attitude, which could range from approval to indifference to antagonism, and the objectives of the teacher-adviser.

Educators did generally agree upon the function of the student newspaper. 'Both high school and college newspapers serve their institutions as house organs serve their organizations,' explained one early text, further defining 'proper' news for the student press to print as news which 'tends to do more good than harm.'[23] The high school press fulfilled a public relations function for the administration and a bulletin board function for the student body.

Student newspapers seldom discussed controversial topics, and generally tended to criticize students more than administrators when issues did arise.[24] Debate

over censorship was simply not applicable; high school staffs assumed that advisers and administrators had control over content. One of the few observers to even address the issue quickly dismissed it under the heading, 'What a Good Paper Does for a School':

> . . . a school paper that is allowed to 'run wild' is anything but a useful interpreter.
>
> That freedom of expression in print is an inalienable right of the immature as well as those experienced enough to appreciate its powers, its dangers and its responsibilities, is a pernicious idea for young people to acquire . . . A paper largely frivolous in its matter and impertinent in its tone, placing absurd emphasis on the trivial, reveling in cheap humor, and discolored by bad taste in infinitely worse than no paper.
>
> But a paper which, under the guidance of a person of mature judgment, prints not only the interesting personal news of the school—such as items about class elections, trips out of town by students, and funny incident stories—but also the more significant news about a new course of study, an experiment in the physics laboratory, a piece of new equipment, or a change on the teaching staff—in other words, a real newspaper—helps the school itself to acquire a healthy self-consciousness and educates the community to a better appreciation of what the school is doing for its young people.[25]

The First Teacher-Advisers. High school newspaper programs began as part of the English curriculum, so it is not surprising to note that a majority of teacher-advisers were trained in English rather than journalism.[26] The issue of whether or not an English teacher was qualified to teach newswriting as a unit in the third or fourth year composition class was largely ignored. After all, the unvoiced argument would have insisted, writing is writing, and if a person could teach composition, he can teach newswriting. And if he teaches a unit in newswriting, he is qualified to teach an entire course in journalism. And if he is teaching journalism, he is qualified to advise the school paper. This type of thinking resulted in some English teachers making critical assessments of the high school newspaper, teaching their students how to produce it in the first place when they had no specialized experience in the field of journalism.

One early methods book aurthor did recognize a need for some kind of preparation on the part of the teacher-adviser, but even his suggested requirements, which certainly could be considered minimal, were seldom met.

> Books on newswriting have appeared in considerable numbers during the past few years. The high school teacher who wishes to take charge of a class in this subject, but who has had no training in newspaper work, can acquire from such books a knowledge of essential facts. Acquaintance with newspaper men will be of great help. Little journeys to newspaper offices will reveal not only how things are done but the spriit in which they are done. And the teacher needs to breathe deeply of this atomosphere. Most important of all is close and understanding friendship for the newspapers themselves growing out of careful reading, analysis, comparison, historical study, and appreciative criticism.
>
> From such experience comes confidence . . . and appreciation of the conditions under which newspapers are made that helps the teacher to avoid giving students false impressions and ideals . . .
>
> But special preparation, through some means, the teacher must have . . . it should never be assumed that whichever member of the faculty happens to have a vacant period is thereby properly ordained to teach newswriting.[27]

In many cases, the teacher-adviser burden settled on that English faculty member who had a free period. Sometimes local newspaper women took the job,[28] sometimes printing teachers (as explained earlier), and occasionally, a college journalism graduate. This last group, however, was by far the smallest, being an outlet, said one college journalism department chairman, for some graduates—particularly women.[29]

By the late 1930s, educators were beginning to take notice of the status of teacher-advisers. A survey of 613 journalism teachers published in 1939[30] showed them generally to be overburdened,

> In addition to varied non-journalistic activities, they teach journalism courses, sponsor publications and supervise school publicity. In the more modern courses, they consider not only journalistic techniques involved in producing the school paper, but also current events, propaganda and the newspaper's social responsibilities. They guide boys and girls engaged in the editorial and business management of newspapers and yearbooks, magazines and handbooks. . .

and undertrained.

> . . . not one-fifth of the 613 teachers of journalistic activities cooperating in this study had majored or minored in journalism as graduate or undergraduate students. The median number of semester units held by these teachers was 30 in English, 20 in education, 16 in social science, and 9 in journalism. They had had two or three journalism courses—and checked in the list of journalism courses were short story writing, verse writing and creative writing.
>
> Some of them reported experience on college publication staffs, some of it doubtless worthwhile. Others—perhaps one in six—had worked on commercial newspapers, though in most cases as summer substitutes. Some of them had educated themselves by studying journalism books and by learning from contacts with newspaper men, printers and engravers.

Recognizing the problem, educators sought solutions. In 1923, almost a decade after journalism appeared in the high school curriculum, the University of Wisconsin initiated a specialized training program for secondary school journalism teachers.[31] After reaching an agreement with the School of Education, the School of Journalism adopted a one-semester, two-credit course for journalism seniors planning to teach the subject. The School of Education then granted these students a University Teacher's Certificate. Several other colleges, including the Universities of Kansas and Missouri, Stanford University and the Colorado State College of Education, founded similar programs.[32]

Most of the training emphasis revolved around summer programs, convenient for an English teacher to fit into an annual schedule. Again the University

of Wisconsin was among the leaders, along with various other Midwest and West Coast schools.[33] Enrollment in these summer sessions increased gradually through the '20s and '30s, but as the survey quoted previously shows, as late as 1939, journalism teacher-advisers were not adequately prepared academically for their duties.

Adequate preparation in the 1939 survey was defined to be six or more college journalism courses, as well as education, English and social science training. The survey concluded:

> The interest in scholastic journalism evinced by heads of schools and departments of journalism (on the college level) indicates that, as public schools insist on better trained journalism teachers and publications sponsors, professional schools will take steps to provide adequate programs of training.

Evolution of the Adviser's Role. In a 1929 journalism text, the suggested classification scheme for news in the school paper included the categories scholastic, athletic, social and miscellaneous (comprised of improvements and damages to school grounds, school board decisions that directly affect the school, and school participation in community or national enterprises).[34] In a 1961 *Quill and Scroll* editorial writing contest, the most popular topic was 'making the most of educational opportunities.'[35] One-fourth of those submitted dealt with national and international events primarily the latter because of Cold War consciousness.

By 1972, the statistics changed.[36] More than one third of the editorials submitted that year focused on national events, while still others discussed international politics. A decade earlier, the National Problems category had included four different subjects. In 1972, it had 14.

Among submissions which dealt with school-related topics, an even greater change took place. No longer did student editors discuss club memberships, pep rallies and slovenly dress as surface complaints. Instead writers examined these issues in the broader context of student-administration problems, student freedoms and student rights.[37] High school writers began to criticize administrators. One student-editor even discussed school newspaper censorship.[38] A comparison study of the contests of 1961 and 1972 concluded, '. . . the high school editor is no longer calling for better homecomings and proms. He seems to be more interested in society, his fellow man and the value of life.'[39]

During the decade of the 1960s, a major change took place in the content of the high school press. As student writers dealt with more controversial topics in a more independent way, censorship became a major issue, and students began to question administration controls in court. Where was the publications adviser amidst this change?

As late as the 1960s, colleges and school administrations had adopted no standardized program for training or hiring journalism teachers, though there was a variety of programs available. An Indiana survey published in 1960[40] showed that 63 percent of those in their first year of advisership had not originally been employed to be newspaper advisers, and that the rate of turnover in the profession was high—half of those responding were in their first year as advisers. Well over half had taken no journalism course in college, and only eight percent had completed courses since assuming the job of adviser. Forty-four percent of the high schools with newspapers had no journalism course in the curriculum, and another 18 percent included it only as part of English composition. The picture which emerges is this: no specific qualifications were necessary to advise school publications; in most cases, teachers did not know when they were hired that an advisership would be included in their duties; most adivsers neither sought journalism training nor offered any in a formal class. Yet these teachers had the responsibility of selecting and training staffs during a period of great change and increasing sophistication in the high school press.

The 1960 survey concludes, '. . . the state should set up more stringent requirements for certification to teach journalism courses and/or advise student publications . . . journalism courses and activities need to be directed by teachers with specialized training . . . Journalism should be included in the curriculum as a specific subject . . . '[41]

In a 1970 issue of *Quill and Scroll* magazine, 10 years later, the same problem is asserted.[42] 'Because of a shortage of journalism teachers, many of the nation's school districts are forced to appoint persons with only a minimum of training in the art of teaching journalism. Frequently, the appointment falls to some teacher who has had one writing course or who simply is in the English area.'[43]

If the duty of the adviser is considered to be editing copy and correcting spelling and grammar, as suggested in the 1966 issue of *The Journalism Quarterly*,[44] then this observation is insignificant. In recent years, however, the potential power of the student press, and therefore the increasing importance of the adviser's role, has come to be realized. Today, in many high schools, advisers need the preparation to teach responsible journalism rather than 'motivated composition.' In ever more frequent situations, their competence is being tested.

> The high school journalism teacher can and should anticipate unique problems not evident in other subjects. One of these problems is direct censorship by the administration, but additionally the adviser himself often finds he is expected to be kind of a super-editor in tune with the administration at all times. [45]

Administrators responding to a 1937 questionnaire said that journalism teachers were generally 'superior teachers so far as personal traits and social backgrounds are concerned. They are above average in general ability and collegiate training. So far as their value to the school is concerned, they rank in the upper third of teachers.[46] In the 1970s, educators are beginning to demand a good background, specifically in journalism, as well. Trust in a competent adviser eases a principal's apprehension of allowing an active student newspaper,[47] which in turn encourages better journalism programs.

Questionnaires mailed to two different types of school press operations emphasize how important administration confidence in a qualified adviser can be.[48] One group of journalism programs was rated 'outstanding' and the other 'average' by high school press association directors of eight geographical regions of the country. Advisers' 'freedom to do the job' was found to be the major differentiating factor.[49] In 'average' programs, the principal was viewed by the adviser as being autocratic, watchful, a policy-maker. In 'outstanding' pro-

grams, he was instead cooperative and encouraging, providing facilities, space and money, and generally allowing the adviser to be independent. Ronald Watson summarizes:

> He (the principal) does not make the mistake of shoving the production of the school newspaper or yearbook on to the shoulders of an already-burdened English or speech teacher, and he does not make the mistake of hiring a journalism teacher who has had no experience at all in the production of publications or teaching of the subject.[50]

He goes on to say,

> The success or failure of the school journalism program thus may well hinge upon the relationship of the teacher and principal. If the principal first sees that a competent, dedicated person teaches journalism, and journalism only, the biggest hurdle is met.
>
> From then on, the teacher takes the helm, keeping the principal well abreast of the progress of the journalism program.

Predictably, the success of staff-adviser relations hinges on a balance between staff responsibility and adviser authority. Each party must have confidence in the other for the relationship to be a good one. Students surveyed are most concerned with the general attitude of the adivser, his journalism background and how well he presents it, and how much responsible freedom he grants the staff.[51] In other words, first they want to know if he is competent; then they want to know if he will be there to give knowledgable advice when they need and want it.

Staffs most resent the adviser who censors, rewrites without consultation and does the layout himself. [52] 'It is the adviser's duty to teach the staff, not to perform its duties. Nor is he hired to be a censor,' explains one journalist.[53]

According to statistics presented in a 1975 *Quill and Scroll* issue[54] as well as those in the recently-published Commission of Inquiry Into High School Journalism report, *Captive Voices,* [55] advisers are little better trained today than they were five or ten years ago.

California survey results published in *Quill and Scroll* led David Henley, chairman of the University of Wyoming School of Journalism, to draw stronger conclusions. Of 158 high school journalism teacher-advisers, 34, or about 21 percent, were journalism majors as undergraduates. Fifteen were journalism minors. A plurality of majors and minors was in the field of English, as might be expected. More than one-third of the 158 received no journalism training in college at all. Approximately 25 percent reported having no professional experience, and of those claiming 'some' experience, only 25 percent had experience which could be considered professional—the other 75 percent had experience with college or high school newspapers only. The findings continue,

> The overwhelming majority of the 158 respondents stated it was their personal opinion that high school journalism teachers in California should have a minimum of a journalism minor and/or meaningful experience . . . Many said the teachers should have majors in journalism, and significant journalism experience.[56]

Several recommendations follow the survey results:

> The California certification requirements for teaching journalism at the secondary level should include a major or minor in journalism.
>
> Those desiring to teach journalism who do not possess a journalism major or minor may be exempted from this requirement if they (a) can prove significant professional journalism experience, or (b) can pass a written and oral examination of the type which could be given a journalism major or minor at the undergraduate level, or (c) have a master's degree in journalism. . .
>
> California collegiate and university journalism educators should offer more, cheaper and easily accessible courses in journalism for high school journalism teachers . . .
>
> School administrators and principals should refuse to hire teachers who do not meet minimum qualifications for teaching journalism.[57]

RIGHTS OF THE HIGH SCHOOL PRESS

To study in detail the subject of First Amendment rights of the high school press would require substantially more space and time than is available here. Not until the late 1960s did high school students begin to protest administration censorship in the courts, and each related case since then deserves close examination to determine its implications and precedents for future decisions. A solid body of law on the subject is still in the process of developing, and federal courts have disagreed on fundamental issues, which consequently remain unclarified on a nationwide scale.

The high school press adviser necessarily has been swept into the controversy since his job involves teaching what can and cannot, should and should not be included in a high school newspaper. As a responsible guide, he has often come under attack from an administration arguing that he allows too much freedom of the press or from students claiming broader rights than the adviser deems valid. This chapter does not attempt to provide a thorough review of student press law to date, but one of limited scope. An overview of the concepts and controversies involved in students' rights cases should serve to clarify advisers' rights and responsibilities.

Status of High School Publications. The First Amendment to the Constitution holds that freedom of speech and of the press cannot be suppressed. 'Congress shall make no law' to that effect, the amendment states. Traditionally, the amendment applies to the commercial press, owned and operated by private citizens, protecting all speech except that in designated categories such as libel, obscenity and invasion of privacy.

The scholastic press finds itself in a somewhat awkward position regarding its First Amendment status. As a student newspaper, it is a form of expression which should be free from government control. '. . . Public school officials are not allowed to interfere with students' freedom of expression

because administrators are representatives of the state and are subject to the same restrictions under the First Amendment as is Congress . . .'[58] Yet as a school publication, it is financed by the state, and therefore under state control just as a private newspaper is under the control of its publisher. Constitutional freedom, states Frank Deaver in *The Journalism Quarterly*, applies

> only to the publisher, to the one who is willing to pay, to risk his investment, to see his right of free expression translated into the print medium . . . In simple truth, then, censorship becomes a fact only when restrictions are imposed from outside the paper's ownership . . . censorship is the wrong word to use with regard to limitations on expression imposed by adviser, faculty member, or administrator.[59]

Don Horine further clarifies this publisher concept:

> . . . many high school administrators feel compelled to clamp strict controls on the student newspaper because, unlike a commercial newspaper, it is not privately owned, and it is an educational vehicle . . . Some even go so far as to hold that the paper must not be controversial because its support is coming from every property owner in the school district, and each therefore is theoretically a 'publisher' of the paper.[60]

Courts, however, have for the most part upheld students' rights to free expression, rejecting the argument that school officials as publishers have control. 'From an administrators point of view,' explains Robert Trager in *Quill and Scroll*, 'it would seem unreasonable to have democracy, the Constitution, and the American struggle for freedom taught in social studies classes and then have censorship practiced in journalism classes.'[61] Or, in the more words of the Supreme Court, '. . . educating the young for citizenship is reason for scrupulous protection of the Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.'[62]

The high school press does, however, have allowable restrictions placed on it. It is less free than the college press, and the college is less free than the independent professional press. These restrictions rest primarily on two concepts. First of all, high school students are relatively less mature than college students or adults, according to the courts.[63] Using this argument to justify limitation of student expression, a district court judge said in 1969, 'The activities of high school students do not always fall within the same category as the conduct of college students, the former being in a much moe adolescent and immature stage of life and less able to screen facts from propaganda.'[64] The concept originated more than 30 years ago,[65] and in a more recent case, Tinker v. Des Moines Independent Community School District,[66] Supreme Court Justice Stewart stated, 'The First Amendment rights of children are not co-extensive with those of adults.'[67]

A captive audience concept is the second which pervades court decisions allowing restrictions on expression.[68] High school is essentially mandatory. Children must attend school until a certain age; the age varies from state to state, but in almost all areas, mandatory attendance extends to at least one year of high school. Courts reason that in a setting where readers of diverse backgrounds are involuntarily exposed to a newspaper's ideas, those ideas should be controlled to a limited extent so as to avoid antagonizing any of the readers. In Egner v. Texas City Independent School District,[69] a district court emphasized this 'captive audience' concept, and Justice Stewart of the Supreme Court included an argument for the existence of psychological 'captivity' of the immature high school student in his 1971 Tinker v. Des Moines Independent Community School District concurring opinion:

> I cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults.
>
> As I said in Prince v. Massachusetts (321 U.S. 158): 'A State may permissably, determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.'[70]

An additional obstacle to free student expression is the historical 'hands-off' policy of courts. 'School officials traditionally have strong supervisory power over students,' explains Robert Trager.[71] 'The state's interest in maintaining its educational system is a compelling reason, courts contend, to allow reasonable regulations essential to upholding order and discipline on school property.' Until very recently, then, courts were careful not to interfere with administrative policy except in extreme cases.

In the 1960s, they began to criticize more readily due to increasing realization that (1) administrators and the administrative process are not infallible, (2) public institutions do not always fulfill their objective of educating children, and (3) schools at times treat children inequitably, particularly regarding racial questions.[72]

Generally, however, high school students do enjoy the same basic freedoms of free expression allowed in the commercial and college press, except that boundary lines are a bit more confining because of the concepts mentioned above. The landmark case to this effect is Tinker v. Des Moines Independent Community School District, in which the Supreme Court declared: 'School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect . . .'[73] The Tinker case has been cited in over 350 court decisions since its announcement in 1971.

Restrictions on First Amendment Freedoms: Libel. Libel is written or printed defamation, communication which 'exposes a person to hatred, ridicule, or contempt, lowers him in the esteem of his fellows, causes him to be shunned, or injures him in his business or calling.'[74] Any part of the printed page can be held actionable libel: headlines, advertisements, pictures, letters-to-the-editor, or captions.[75]

Libel suits involving the high school press are rare.[76] More efficient remedies, involving less publicity, are available, and usually serve to keep cases

out of court. The danger always exists, though, and the responsible adviser is thorough in discussing this limitation of First Amendment rights with his students.

In high schools, defamation cases have most often involved libel per se in yearbooks, specifically captions. One famous example dealt with a high school annual's practice of placing appropriate literary quotes beneath students' pictures. When one 16-year-old girl found 'A soft, meek, patient, humble, tranquil spirit . . .' beneath her photo—from Thomas Dekker's *The Honest Whore*—her parents filed suit against the Board of Education, the principal and the yearbook printing company. The case was later settled out of court.[77]

The Supreme Court in recent years has substantially narrowed the definition of libel. It is perhaps easier to identify libel by studying what can be defended against the charge rather than by memorizing its formal definition. Truth is, of course, a complete defense.[78] As long as a subject's privacy is not invaded, a publication can print what is true.

A 1964 landmark case, New York Times Co. v. Sullivan, granted newspapers much wider privilege.[79]

A new standard emerged from the decision: 'public officials could be openly criticized, and if done without malice, the criticism would not be considered actionable libel.'[80]

School administrators come under the classification 'public official,'[81] but when undertaken by student newspapers, criticism of them can be held to be 'gross disrespect and disobedience,'[82] leading to allowable restraints on free expression. High school writers, editors and advisers must be careful to criticize responsibly and fairly if the criticism is to be defensible.

Restrictions on First Amendment Freedoms: Obscenity. Obscenity is one of the most tangled areas of mass communications law. 'Legislative enactments and court decisions on obscenity have shown remarkable ability in creating chaos out of mere disorder,' explains one text.[83] Definitions of obscenity have generally been vague and difficult to apply objectively, and the issue is further confounded by debate over whether 'obscene' material should be restricted at all. Arguments that the First Amendment phrase 'no law' means no law, Congress and the courts having no authority to dictate morality, are countered by the theory that man is inherently weak and 'obscene' literature can further weaken him, leading to antisocial thoughts and behavior which must be controlled.

A 1973 case, Miller v. California, led the Supreme Court to summarize its viewpoints and give as a working definition of obscenity that which (1) 'the average person, applying contemporary community standards' would find, taken as a whole, to appeal to prurient interests, (2) portrays in an offensive manner 'sexual conduct specifically defined in the applicable state law,' and (3) has no serious literary, artistic, political, or scientific value.[84]

The courts make a distinction, however, between adult readers and minors. High school newspapers are judged under the concept of 'variable obscenity' as introduced in Ginsburg v. New York.[85] In this case, the Supreme Court granted the state a right to 'accord to minors under 17 a more restricted right than that assured to adults to judge and determine for themselves what sex materials they may read or see.'[86] In other words, the state (including school officials) has a right to judge more severely material directed toward a high school audience. It may define as obscene that which 'predominantly appeals to prurient, shameful or morbid interest of minors, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors.'[87] All three criteria must be met for material to be legally obscene.

Most often, high school controversy arises over profane and vulgar words rather than actual obscenity as defined by the Ginsberg standard.

Courts have ruled in a number of recent cases that words which administrators label vulgar or profane are not illegal obscenity, and therefore remain protected speech.

Restrictions on First Amendment Freedoms. Disruption of School Activities. Courts, in deciding high school censorship cases, have repeatedly referred to the importance of allowing school administrators to maintain discipline. Comparable in a broad sense to the commercial press' restriction against 'inciting lawless action,'[88] the rules for high school are much more strict, but not inflexible.

> The courts have, in their approach to the resolution of student press issues, followed the balancing test which operates generally in First Amendment law. The balance with respect to the student press has to do with the need of the school to maintain an orderly and disciplined atmosphere for the educational processes balanced against the First Amendment rights of the individual to free expression. The preferred position of the First Amendment which prevails in the balancing test seems to also prevail in the balancing test in student litigation.[89]

Citing with approval the court's words in a 1966 case, Burnside v. Byars,[90] the Supreme Court quoted in the landmark students' rights case, Tinker v. Des Moines Independent Community School District:

> School administrators cannot infringe their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights . . . does not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.[91]

The criteria for judgment of student actions has since remained 'material and substantial interference' with school discipline.

More completely, the Tinker landmark puts forth the following standard:

> In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than mere desire to avoid the discomfort and unpleasantness that always accompany an un-

popular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden could 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school', prohibition cannot be sustained . . . conduct by the student, in class or out of it, which for any reason whether it stems from time, place or type of behavior materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guaranty of freedom of speech.[92]

Of additional importance in this case, the court's decision shifted the burden of proof to school administrators. They must show that violence was a threat rather than ask students to prove that it was not. First Amendment rights are assumed, then, until it can be proven they should not be. Later cases in the lower courts have maintained this position.

Courts also make an important distinction between violence caused directly by the speech itself, and that caused by groups who oppose the publication. 'A fundamental First Amendment concept,' states Trager, 'is that officials are obligated to regulate the hostile conduct of others rather than abridge an individual's right to free expression, unless that expression takes the form of 'fighting words,' words which incite violence and lawlessness.'[93]

Restrictions on First Amendment Freedoms: Other Limitations. Though the issue has not surfaced in any student case yet decided by the courts, the right to be let alone, more formally designated the right of privacy, is a widely recognized prerogative of individuals. Even in states which have no such law, a case may be forwarded on the basis of privilege assumed in several amendments of the Bill of Rights.[94] Violation by a high school publication can lead to legal action, though as in libel cases, invasion of privacy suits are likely to be settled out of court.[95]

A person's privacy has been invaded if a publication (1) prints private information, even if truthful; (2) publishes false, though not defamatory information; (3) uses a person's name or photograph in an advertisement without authorization; (4) intrudes upon an individual's solitude, or (5) fictionalizes material, combining it with factual information for purposes of increasing the entertainment value of the publication.[96]

While truth cannot be a defense here, as it is for libel, invasion of privacy claims must be balanced against the public's right to know. Therefore, newsworthiness is a major defense for invading an individual's privacy.[97] If it is important for the public to know the published information, if it is newsworthy, an individual's right can be overridden. A more obvious defense against the charge is consent.[98] If it can be proved that a person gave his permission to use private information, a lawsuit will not be successful.

Summary. At the close of this chapter, it should be pointed out that First Amendment rights vary according to the situation of the publication in question. The rights outlined apply to underground as well as official public school newspapers, but publications produced as a classroom activity for which credit is received are possibly subject to more strict control. Courts have not yet specifically addressed the issue. Private school officials, outside of the definition of 'arm of the state,' have much broader powers of control.

Generally, however, the First Amendment guarantees freedom of speech and dissemination of that speech in public high schools as long as it is not libelous or obscene, or tends to disrupt normal school activities, though prior restraint and regulation of distribution have been allowed by most district courts. Gross disobedience of school authorities and rules on the part of the student journalist will often preclude First Amendment considerations.

RIGHTS OF THE PUBLICATIONS ADVISER

When the wishes of a school board come into conflict with the ethics or legalities of good journalism, the adviser is caught in the middle: he has a responsibility both to his employer, in the form of a school board, and to his profession. Until very recently, countless advisers in disagreement with their administrators resolved the situation by yielding their prerogatives as journalists to the authority of their employer. Submitting to violations of First Amendment rights, they generally either did not know of those privileges (many advisers have little background in journalism), or were understandably reluctant to place their job in jeopardy by demanding their rights. After all, an adviser cannot teach students about the First Amendment if he is not hired to teach at all.

As students have clarified the rights of the high school press in court, however, advisers have become slightly more bold. Two cases brought by advisers have been decided by the courts, a few other cases are pending, and several other adviser-administration conflicts have been widely publicized. But while student case decisions generally favor students, advisers have not fared so well to date.

Court Decisions. In the spring of 1969, the adviser to the Ocksheperida of Sheridan High School, Wyoming, and the school's journalism teacher, was given a 'Notice of Dismissal' by the Sheridan County Board of Education. The notice gave the following reasons for dismissal:

1. Your philosophy and practice of education is detrimental to the best interests of the high school students.
2. Incompetency, as evidenced by the April 1, 1969 edition of the Ocksheperida, the school newspaper of Sheridan High School, for which you are adviser.[99]

The teacher-adviser, Jergeson, appealed in a hearing held June 20 of that year, but the board maintained its position. One month later, Jergeson filed for judicial review. The district court supported the dismissal, and when the Wyoming Supreme Court issued its decision on the case in 1970, Jergeson lost again.[100]

The charges stemmed from an April Fool edition of the Ocksheperida which contained, among other items, an 'exaggerated, but not necessarily false'[101]

article about a faculty adviser entitled 'Meany Master,' a questionable letter-to-the-editor, and a picture of a row of urinals. Jergeson argued that the school board had no policy statement directing him to censor the Ocksheperida, the editor of the newspaper (and author of the article in question) was responsible for such judgments, and the board had no right to fire him for failing to do something he had never been directed to do.

The court found little merit in this argument. Jergeson advised the paper and taught a class in journalism, and this circumstance was sufficient to allow that he held final responsibility for the April 1, 1969 issue of the Ocksheperida, the court maintained.

The district court held that the material should not have been published, and the Wyoming Supreme Court quoted that opinion in its own decision:

> . . . (Other incidents and) his apparent approval of a picture of a row of urinals in the school newspaper are not exactly fine examples to set for impressionable students. It is not that these students or at least a part of them have not been exposed to a more base and filthy humor outside the schools but in the halls of an institution where lofty ideals and examples should be the rule, it is out of place. The School Board obviously was offended by this conduct which could well be classified as incompetency.[102]

Jergeson cited Tinker v. Des Moines Independent Community School District in arguing that the items did not disrupt school activities, and the faculty member who was the subject of the 'Meany Master' article said that, though she was shocked, the satire did not affect her teaching ability.[103] The Supreme Court was not convinced, again quoting the district court:

> It seems to the Court that the Board of Trustees could have well decided that the mentioned articles appearing in the Ocksheperida did interfere with the discipline of the school and did collide with the rights of others, namely the teachers and administrators of the school. . .
>
> The students in speaking out in the school paper as they did were not entertaining a subject such as the war in Vietnam or some controversial matter of a public nature but were making personal attacks on members of the faculty.[104]

Jergeson also appealed the district court decision on the grounds that the school board had not notified him of all the charges against him. The original charges of incompetence and detrimental philosophy were expanded to include his use of the word 'rape' in front of high school girls, his lack of classroom discipline, his inappropriate dress and hair length, and an alleged 'dirty poem' written on a blackboard in Jergeson's classroom. The first two of these charges were overturned by the Supreme Court, and the third found insufficient grounds for removal by itself, but the court added, his appearance did set a poor example. The Wyoming Supreme Court held that Jergeson should have objected to this failure of notification much earlier rather than using it as grounds for appeal.

The court opinion was not unanimous in upholding Jergeson's dismissal, however. Chief Justice Gray did not support the school board's action. Prefacing his remarks by saying that he was not greatly concerned about Jergeson since he had already accepted another teaching position (in Oregon), the Chief Justice went on to say,

> I am not unmindful of or opposed to the doctrine of abstention by the courts from interfering with school boards in affairs of this kind. Today, however, in the light of . . . fairly recent decisions particularly of Federal courts dealing with due process, with academic freedom, with the right of free speech . . . we have an entirely new 'ball game' . . .[105]

The items of the Ocksheperida, he suggested, were gentle compared to those of *Grass High* in the Scoville v. Joliet Township High School District 204 which had recently been decided in the Federal Courts,[106] and 'accordingly, it seems to me that before plaintiff could be penalized for failing to prevent the publication of an article in the school paper, the school board would first have to justify an invasion of the author's right.'[107] This minority dissent, however, could not change the majority's decision, and Jergeson remained fired.

During the same spring that the controversial Ocksheperida issue was published, trouble crept up on the B-Liner in the Brookfield, Missouri, School District, and a second adviser took his grievance to court.[108] Wilmer Calvin, Jr., charged the Brookfield Board of Education with violating his constitutional rights when he was fired for destroying a controversial issue of the student newspaper rather than letting the principal of the high school see it. According to Calvin, the problem stemmed from a December 19, 1968, issue which criticized a school dress code recently adopted by the board. The case involved substantially more than First Amendment rights, though this was the basis for Calvin's appeal.

According to Calvin, the day the B-Liner was distributed, containing six items relating to the dress code including a cartoon and editorials, both the principal, Robert Crow, and the superintendent, Roy Rupp, reprimanded Calvin. When the February issue had more articles about the code, as well as interviews with school officials who opposed the regulations, Crow told Calvin he wanted to review all future issues prior to publication. The school board revoked Calvin's contract offer for the next year in late March, soon after an article appeared in the Brookfield community newspaper along with a letter-to-the-editor from Calvin's journalism class charging that the high school paper was being censored. Calvin also cited his activity in a community teachers' association as an underlying reason for his dismissal.

According to the Federal district court ruling, however, the events leading to Calvin's dismissal were substantially different from this account— and less related to First Amendment issues of prior restraint and freedom of speech. The court opinion states that the December 19 issue of B-Liner only led school authorities to suggest that too much space had been devoted to a single topic, not to reprimand Calvin. The following issue of February 13 had one article relating to the dress code; and

when two weeks later the B-Liner was to have several more dress regulation items, Calvin offered Rupp and Crow the opportunity to review the newspaper before publication. But the issue was never published.

On March 12, Calvin related to Rupp certain suspicions he had had for a long time concerning student use of marijuana, and that he had in fact previously contacted federal narcotics agents. Rupp told him not to spread the suspicions, but according to the court, it seems reasonable to infer that the teacher did not follow this directive since a student's father called Calvin soon after, complaining that he had falsely accused the boy of selling marijuana. Calvin referred the call to Rupp who later severely reprimanded the newspaper adviser for not following instructions. Calvin left the school and did not return for a week.

Another issue of the B-Liner was due to be published at this time, and Supt. Rupp, hearing a rumor that it was to be a 'hot' issue involving marijuana use in the school, requested that Calvin submit the paper for review. Calvin made no objection, said the court, but the next day he told the student newspaper staff to temporarily stop work on the issue, and then destroyed the partially completed B-Liner before administrators saw it. A few days later, the school board revoked his contract offer. The district court concluded:

> On the basis of the credible evidence, we find that the school board's action . . . in refusing to renew (Calvin's) teaching contract was based on his violation of the school board's policy in that he failed to immediately report suspicious matters relating to conduct of students, on his responsibility for initiating an investigation, without the knowledge or authority of the board, by a federal narcotics agent, as well as his action in unjustifiably directing his class to cease publication of the school newspaper. The board was warranted in concluding that (Calvin's) conduct constituted insubordination and undermining the authority of the school administration.[109]

And when Calvin contended before the Eighth Circuit Court of Appeals that his First Amendment rights had been violated, the court ruled:

> We find the argument wholly frivolous. The only dissatisfaction expressed by any of the (administrators) with the school newspaper was that the variety of subject matter dealt with was not sufficiently broad. There was apparently no criticism of either the form or content of any individual articles. Furthermore, the (administrators) declined an offer by (Calvin) to provide them with a pre-publication copy of each issue for approval. While publication of the newspaper was terminated prematurely, this was an action taken on (Calvin's) own initiative . . . In short, we find that (Calvin) has failed to demonstrate any free speech issue whatsoever with respect to his supervision of the school newspaper.[110]

Both courts upheld Calvin's dismissal.

Though two advisers' rights cases have reached the courts, and both resulted in the advisers remaining dismissed, the issue is little better clarified now than it was prior to the court decisions. In both cases, more than First Amendment questions were considered. For Jergeson, subsequent charges and due process demands became the basis for appeal rather than free speech claims. The Calvin decision revolved around charges of insubordination in failing to report suspicious student behavior to the proper school authority, and the court entirely dismissed the question of the adviser's First Amendment rights.

While First Amendment considerations are hazy, however, certain ramifications for advisers may be inferred from these two cases. The adviser can be held responsible for the school press, even in situations where he grants his student staff substantial editorial power. When Jergeson's student editor testified that she only 'imagined' Jergeson must have seen the controversial articles before they were printed, and that he never actually discussed them with her,[111] the court ruled that since Jergeson had not criticized the articles, he took responsibility for giving them 'apparent approval.'[112]

If he is to be held responsible, the adviser should have a thorough background in student press law to date. Not only is this knowledge crucial to his giving sound editorial advice, but it would enable him to determine when he cannot and should not allow an item to be printed. An adviser can be an unlawful censor, too, as the appellate court pointed out in Calvin v. Rupp when they charged Calvin with censoring the controversial B-Liner by destroying the partially completed issue. Calvin led his class to believe he was protecting them from outside censorship, the court contended. But actually he, himself, was the censor.[113]

Though both courts found against the advisers when their school newspapers had published items that would probably be considered constitutionally protected free speech, the strong dissenting opinion of Wyoming's Chief Justice Gray implies that adviser's rights are parallel to student press rights, and cases should be judged according to the same guidelines. In other words, an adviser cannot be dismissed for incompetence when allowing students to publish protected speech as defined by courts. The danger remains in advisers' cases, however, that an administration will cloud First Amendment issues by bringing in additional charges unrelated to freedom of speech.

Pending Court Cases. Two cases now pending in state courts may help clarify advisers' rights. Don Nicholson in California and Joan Lentczner in Indiana are both fighting dismissal by administrations who allegedly violated their First Amendment privileges.

Nicholson, an experience journalism teacher and newspaperman with a law degree, attributed his dismissal to a small plaque resting on his school principal's desk.[114] The Rotary Four-Way Fairness Test provided the following guidelines which, according to Torrance High School Prin. Carl Ahee, should apply to school newspaper publication:

1. Is it the truth?
2. Is it fair to all concerned?
3. Will it build goodwill and better friendships?
4. Will it be beneficial to all concerned?

Nicholson and his students found Points 3 and 4 to be inapplicable to a newspaper, but in the absence of more specific criteria, Nicholson advised the school paper in a way he deemed appropriate to a pre-professional training ground, the format of the course. '(The principal) did the best he could; I did the best I could,' said Nicholson later, 'and at some point we were unable to compromise.'[115] That point was the publication of six articles concerning Chicano problems at Torrance, student-police relationships, a movie review of 'Midnight Cowby,' and a play review of 'Hair.' When Nicholson refused to submit copy to Ahee for review prior to publication, the principal recommended his contract not be renewed.

After the Torrance Board of Education voted to uphold Nicholson's dismissal for failing to comply with school regulations, the adviser filed suit against the administration. The National Education Association funded the lawsuit, and students, parents and teachers offered support. At the time of this writing, a trial date has not been set. Pre-trial motions for dismissal of the case have been made by the school board on the grounds that the statute of limitations has run out (the controversy arose in 1970) and that improper parties were named in the suit. Such motions have delayed the trial for at least a year. If and when the case comes to court, though, Nicholson hopes it will be decided on First Amendment issues. If it is, the decision will aid a great deal in clarifying advisers' rights.

A more recent First Amendment controversy involved Joan Lentczner, a journalism teacher and publications adviser at Yorktown High School in Yorktown, Ind. A series of articles about sex-related student problems in the school resulted in her dismissal a year ago (see the JEA Publication 'A Struggle in Press Freedom: Joan Lentczner').

Lentczner, with a master's degree in journalism, professional newspaper experience, and former background as a scholastic publications adviser, was in her first year of teaching at Yorktown when her student managing editor, Ted Haggard, came to her about the high school's sex-related problems. She told him he would have to (1) prove a problem did in fact exist, (2) research the problem thoroughly, and (3) report the findings. This procedure, she felt upheld the criteria she taught for a good publication: accuracy, responsibility, leadership, fair play. Haggard also spoke with both the principal and superintendent. Both men gave support and encouragement to the series project.

About April 19, about one month after the first article of the series, the principal of Yorktown High School requested that Lentczner submit a letter of resignation. When she refused, he offered to write a highly favorable letter of recommendation for her, told her he felt her to be a highly qualified journalism teacher who should perhaps work on a college rather than high school level, and suggested that they simply disagreed in their philosophies. 'This community wants a censored press,' he explained. 'They are not ready for you. You're too progressive for this area.'[116]

Lentczner has since decided to fight her battle in court. She is the first adviser to receive financial backing from the Journalism Education Association's Scholastic Press Freedom Fund, and the Indiana Civil Liberties Union has agreed to take the case. A change of venue has been granted and depositions were taken on January 30, 1975.

Both Nicholson and Lentczner are directly involved in a First Amendment controversy, but in both cases, that controversy is clouded by other charges of incompetence. It remains to be seen whether courts decide the cases on the basis of First Amendment issues and clarify their stand on advisers' rights or minimize these issues, as in the cases of Calvin and Jergeson.

Out-of-Court Settlements. At the same time a few advisers are fighting court battles over First Amendment rights, others have resolved disagreements with administrative policy out of court. One such adviser is Anne Hutchins, a member of the Millington, Mich., high school faculty. She was charged with displaying 'poor public relations and an uncooperative attitude' toward the local weekly newpaper, the *Millington Herald*.[117]

Friction arose, according to Hutchins, when the Herald's publisher, James D. Wilson, used several items from the student newspaper without giving credit to student writers. Two articles were reprinted exactly, three more were loosely rewritten. Several journalism students protested this practice in the next issue of the school paper. Hutchins offered space to Wilson for rebuttal, but he declined, and school superintendent Richard C. Glynn apologized to the publisher for the 'defamatory and derogatory' remarks students made in their editorials.

Two weeks later, Wilson approached Hutchins requesting photographs of the high school's Homecoming queen and court taken and processed by journalism students. He said his camera was broken at the time. When the adviser refused his request, Wilson complained to the school administration.

Although she reached an agreement soon after with Wilson and the Millington High School principal to supply the Herald with copy, photos and school activities information, Hutchins received notice of her dismissal. Glynn explained that the high school newspaper, supported by taxpayers' money, should not be used to take 'potshots' at taxpayers, and although there was no written set of guidelines for the school publication, past practices set precedents.

Wilson explained that personal differences between him and Hutchins were cleared up, and he hoped the school board would not use the conflict as a reason to dismiss the adviser.

Hutchins filed a grievance through the Michigan Education Association, and the board reversed its decision before the case went to court. Hutchins was reinstated in her teaching position at the beginning of the 1974-75 school year.

Vicki Bortolussi, holder of bachelor's and master's degrees in journalism, protested a more subtle infringement of her First Amendment rights, as she saw them, last October.[118] When she refused to sign her Agoura High School, California, principal's five-point policy for school publications, the princi-

pal did not dismiss her, but reassigned her to five periods of English classes, naming himself co-adviser to the student newspaper along with the present yearbook adviser. Bortolussi considered three of the five points to be 'a form of censorship': (1) quotes were to be checked with the person being quoted after the story was written before publication; (2) the adviser and principal would review together letters-to-the-editor to decide upon their appropriateness to the school paper; and (3) three-fourths of the newspaper would be devoted to students' school activities, such as club news, honors, and student achievements. 'They were not good journalism,' said Bortolussi. 'I couldn't teach journalism as it should be taught if I had signed.'

Las Virgenes Unified School District trustees agreed. They ordered Bortolussi reinstated as newspaper adviser, and directed that a committee of parents, teachers, students and administrators be organized to determine school publications policy.

Though out-of-court settlements are less publicized than formal litigation, there remains one other category of adviser-administration conflict less often recognized than either of these situations. When Sam Feldman, professor of journalism at the California State University-Northridge, asked advisers attending a scholastic press freedom seminar how many of their publications were censored, few raised their hands. But this was not surprising, continued Feldman, since those advisers who allowed censorship would not be the ones concerned about First Amendment rights, and therefore would not attend such a seminar.[119] The third category of conflict resolution, then, involves those publications advisers who allow administration control, and consequently have no disagreements with administrators. Although advisers must be cautious about overstepping the poorly-defined boundary lines of their First Amendment rights, they must also be sure to accept responsibility the profession of journalism places upon them. To allow censorship which courts do not allow will certainly minimize conflict with administrations, but it may jeopardize fulfilling one's purposes as a journalist and educator.

Adviser Organizations. Two common identifying elements emerge in these case studies: (1) most advisers and administrators involved in successful resolutions of First Amendment controversies have an extensive knowledge of journalists' legal rights, and conversely, unlawful censorship is more likely to exist where the adviser and administration are unsure of those rights, and (2) difficulties most often arise in circumstances where there is no written editorial policy. Organizations are now working toward amending these deficiencies where they exist in the hope of easing adviser-administration conflict.

The most active organization in this regard is the Journalism Education Association (JEA). With its current membership of about 2,000 journalism teachers and advisers, the JEA is in a unique position to deal with the profession's problems. A $10 annual membership fee entitles teachers to a quarterly newsletter, *Newswire;* a quarterly magazine, *Communication: Journalism Education Today;* and access to a 'hotline' service for immediate help and advice for professional dilemmas. The organization also holds national and regional conventions which serve to increase intra-profession communication and build a well-defined and recognized identity for secondary school journalism educators as a group.

Various national, regional and state high school press organizations serve journalism education through newsletters, training seminars for students and teachers, instructional resources and scholastic press contests.

State education associations and the National Education Association have offered support to several advisers in conflict with their administrations, such as the California Teachers' Association in the Bortolussi case and the Michigan Education Association for Anne Hutchins. The American Civil Liberties Union and its state counterparts have provided legal counsel for several advisers and students involved in First Amendment controversy, including Joan Lentczner.

One component conspicuously missing from this list of organizations aiding advisers in the trend toward attaining broader constitutional rights in the established media, or professional journalists. With notable exceptions, such as the Reporters Committee for Freedom of the Press, the Commission of Inquiry into High School Journalism found 'little evidence that professional journalists are aware of high school journalists' legal rights or are concerned about their problems. In fact, the high school media are so isolated that in most cases professional journalists are not even aware that problems exist.'[120] In many cases, editors surveyed by the Commission did not agree that high school publications should enjoy First Amendment freedoms. Fully 10 percent felt these constitutional rights should not apply on the high school level, and another 52 percent felt they should apply 'only under certain conditions.'

Generally, the basic function of special interest groups working for advisers' rights has been that of communication. These organizations serve to communicate **to** advisers, administrators, students, professional journalists and the general public what problems exist and what legal rights have been defined. They serve to communicate **among** advisers, administrators and students possible problem-solving or compromising devices, such as written guidelines for publications and joint editorial boards. Through such organized communication, today's trend is toward a steadily increasing understanding of the First Amendment rights and responsibilities of the high school press adviser.

Summary. As journalism teacher-advisers become better trained and better organized professionally, advisers are more often following the lead of student journalists of the '60s and clarifying their rights in court. Only two relevant cases have yet been decided; and although both decisions were adverse to the advisers concerned, other than First Amendment considerations were of primary importance to the courts in both. Several out-of-court settlements have supported a trend toward granting advisers the same constitutional rights given students, and two pending cases should serve to further clarify the issue.

AFTERWORD

The shortcoming of primarily examining legal evidence in establishing the role of today's adviser is that actual practice is not always consistent with court decision. Acting within constitutional limits does not necessarily mean that conflict will not arise. 'It's been my experience that First Amendment cases . . . are perhaps the easiest to win in court, but the most difficult to enforce,' said an American Civil Liberties Union lawyer who has handled several students' rights cases.[121] Taking a case to court may not always be the wisest resolution. Litigation is costly and time-consuming, and a compromise may be much more effective if reached out of court instead.

The key element in any such compromise is that the groups concerned be well informed as to what the high school press may and may not do, how those rights are supported by the First Amendment, and why such an amendment must be exercised in a free, democratic society—even on a high school level. Education of the parties involved is the responsibility of the publications adviser. Because of his specific journalism training, which administrators lack, and continuity in a school system, unlike students who are gone within four years, the adviser is the only person who can work steadily toward developing student newspapers to their full potential.

Several suggestions have been offered to facilitate this communication. First, advisers should not wait to be put on the defensive. They should instead go to administrators with suggested guidelines before principals and superintendents come to them with criticism, and perhaps censorship. Then, they can keep emphasis on the positive—what students **can** do with their newspapers—rather than the negative—what they **cannot** do. Second, those guidelines should be agreed upon and written down. Principals come and go; administrations change. To avoid future conflict, advisers should be sure that newspaper policy is permanent. Third, administrators, students and local professional journalists should be informed on the current status of the high school press. This can be accomplished through a simple newsletter, a phone call or a personal visit; and the effort will be amply rewarded if compromise becomes necessary since groundwork for intelligent discussion will already be laid.

Finally, the major task of the high school press adviser is to teach students those responsibilities that accompany First Amendment rights. By supporting and guiding students as they experience both rights and responsibilities, the adviser will fulfill his dual role as journalist and educator, producing better citizens as well as a good high school newspaper.

FOOTNOTES

1 'Real Crisis of Scholastic Press Freedom,' panel discussion tape, Journalism Education Association (JEA), West Coast convention, Spring, 1974.

2 Sam Feldman, op. cit.

3 'Journalism,' *Encyclopedia Britannica*, 1966, XII, 94.

4 Ibid.

5 Grant M. Hyde, 'Journalism in the High School,' *Journalism Bulletin*, II (1925), 1.

6 'Journalism,' *Encyclopedia Britannica*, 1966, XII, 94.

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